IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 131 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RASHIKLAL JIVANLAL PRAJAPATI

Versus

BHARATKUMAR JIVANLAL PRAJAPATI

Appearance:

1. Civil Revision Application No. 131 of 2002

MR VIKRAM J THAKOR for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

MR PV NANAVATI for Respondent No. 2

MR VIBHUTI NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/08/2002

ORAL JUDGEMENT

#. This is an application in Revision under Section 115 of the Civil Procedure Code, 1908,

challenging an order of learned Motor Accident Claim Tribunal, at Mehsana, dismissing the application for condonation of delay by order dated 9.11.2001.

#. The petitioner, herein, is the petitioner before the said tribunal. The said petitioner had filed petition for compensation for accidental injury suffered by him on 12.9.1989. The petition was filed in the year 1989 being Motor Accident Claim Petition No.189/1989. It seems that first respondent, herein, is the brother of the petitioner and he appears to be the owner of the vehicle involved in the accident. Though the matter was filed in the year 1989 the brother residing in the same house was not served with process for more than 10 years and the matter was placed at the stage of service of process on the said respondent. However, since no process was undertaken by the petitioner, the learned tribunal dismissed the said petition in absence of the petitioner and his advocate.

#. Feeling aggrieved by the said order of the tribunal, the petitioner preferred an application for restoration of the said petition, but since he was late, he submitted an application for condonation of delay, which was turned down by the learned tribunal saying that the delay was not satisfactorily explained. Hence the Revision.

#. Notice was issued and, thereafter, rule was issued. Mr.Vibhuti Nanavati, learned advocate, appears for second respondent. None appears for first respondent.

#. I have heard the learned advocates for the parties and perused the papers.

#. It appears that the petition was dismissed for want of prosecution on 7.4.2000. The petitioner had contended in application for condonation of delay before the learned tribunal that the petitioner had contacted his advocate on 15th June, and the advocate had told him that the petition was dismissed, therefore, restoration application was filed on 21st June. However, the office found that it was time barred and, therefore, application for condonation of delay was submitted on 25th July. The learned advocate for the contesting respondent has argued at length that there is no jurisdictional error committed by the learned tribunal and, therefore, the Revision Application should be dismissed.

#. It is required to be seen that the matter was at preliminary stage and first respondent was not served, the second respondent was served and it had made

appearance before the tribunal also. Issues were not framed and matter was not ready for recording of the evidence and in that view of the matter even if the learned tribunal was justified in dismissing the petition against the first respondent under Order-9 Rule-5 of the Civil Procedure Code, 1908, there was absolutely no justification for dismissing the petition against the insurer - respondent No.2. In that view of the matter, the learned tribunal appears to have committed serious illegality in dismissing the petition against second respondent.

#. This aspect has again not been considered by the learned tribunal when the application of the petitioner for condoning delay was dismissed. In that view of the matter, there appears to be jurisdictional error on the part of the learned tribunal. Even otherwise it was the case of the petitioner before the learned tribunal that he was sick and his advocate was busy elsewhere and, therefore, they could not appear before the tribunal on 7.4.2000. He has also stated that he had contacted his advocate on 15th June, and he came to know about the dismissal of the petition on that day only. That, thereafter the restoration application was submitted on 21st June. This aspect of the case has not been controverted. In that view of the matter, it cannot be said that the petitioner had no justification to remain absent on 7.4.2000 and there was no justification for going late to the tribunal for restoration application.

#. This aspect of the case has not been properly considered by the learned tribunal. The application for condonation of delay is required to be construed liberally and if so construed, it can be said that there was no negligence, inaction or want of bonafide on the part of the petitioner and, therefore, this is a fit case wherein this Court should exercise revisional power under Section-115 of the Civil Procedure Code.

##. At the same time, it is required to be considered that the petitioner and respondent No.1 appear to be real brothers and their address before the tribunal as well as before this Court is the same, which shows that they both reside in the same house or in adjoining houses, even then respondent No.1 has not been served, this shows that there is something wrong with this petitioner as well as respondent No.1. Even the learned advocate for the petitioner also says that it is not acceptable as to why respondent No.1 staying in the same house or adjoining house could not be served for more than 10 years. The learned tribunal will naturally be at liberty to consider

this aspect of the matter while considering the rate of interest and period from which the interest should be awarded, in case the petitioner ultimately succeed in the petition.

##. Even if the application for condonation of delay is allowed, the petitioner will be required to go to the learned tribunal for arguing the matter for restoration and at that time it would be open to the second respondent to contest the said application even on the ground of legal defence under Sub Rule-2 of Rule-5 of Order-IX of the Civil Procedure Code.

##. For the foregoing reasons, this Revision Application is allowed and order passed by the learned tribunal on 9.11.2001 dismissing the application of the petitioner, herein, for condonation of delay is set aside. The delay caused in filing the said application is ordered to be condoned. Rule is made absolute. The matter shall be sent back to the learned tribunal for dealing with application of the petitioner for restoration of Motor Accident Claim Petition No.843/2000, which shall be decided by the said tribunal in accordance with law. No order as to costs.

(D. P. BUCH, J.)

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